Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Notice of Inquiry Concerning a Review of the Equal Access and Non-Discrimination Obligations Applicable to Local Exchange Carriers.	)	CC Docket No. 02-39

COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

Pursuant to the March 7, 2007 Public Notice in this proceeding,[1] the National Association of State Utility Consumer Advocates ("NASUCA")[2] submits these brief comments in response to the request of the Federal Communications Commission ("FCC" or "Commission") to refresh the record on "whether there [is] a continued need for the equal access and nondiscrimination obligations contained in antitrust decrees and carried forward by section 251(g) of the Communications Act of 1934, as amended (Act), or contained in the Commission's rules."[3]

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[1] DA 07-1071 ("Public Notice").

[2] NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio. Rev. Code Chapter 4911; 71 Pa.Cons.Stat. Ann. § 309-4(a); Md. Pub.Util.Code Ann. § 2-205; Minn. Stat. § 8.33; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

[3] Public Notice at 1, citing *Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, Notice of Inquiry, 17 FCC Rcd 4015 (2002).

It has been five years since the Commission took comments and reply comments on these issues. But the need to maintain the equal access requirements is as great as ever.[4]

In earlier comments, NASUCA stressed the fact that the Regional Bell Operating Companies ("RBOCs") and other incumbent local exchange companies ("ILECs") remained monopolies.[5] In many areas of the country, this is no longer true. Yet throughout the country, these companies remain dominant in their markets. The phenomenon recognized in the Public Notice, that "the market appears to be shifting from competition between stand-alone long distance services to competition between service bundles including both local exchange and long distance services,"[6] is a result of that dominance. The RBOC/ILEC dominance has also been enhanced as a result of the other phenomenon identified in the Public Notice, that "[t]he industry structure has also changed with the mergers of local and long distance providers."[7]

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[4] In that respect, consumers can be thankful for the Commission's not changing the rules in the last five years.

[5] NASUCA Comments (May 10, 2002) at 2-3.

[6] Public Notice at 1. NASUCA's comments also referred (at 3) to the fact that, at that time, only elevem BOCs had met the conditions allowing them to provide in-region long distance service. As of December 3, 2003 all of the RBOCs were allowed in this market.

[7] Public Notice at 1, citing the latest round of these mergers, *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Rcd 18290 (2005); *Verizon Communications Inc. and MCI, Inc. Application for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433 (2005).

Today, the issue is not the same as when the equal access requirements were codified in 47 U.S.C. 251(g), but the need is just as great: As NASUCA stated in the earlier comments, "The obligations were in place not simply because of AT&T's dominance in the interexchange market, but because of the fear that BOCs would use their local exchange monopoly position to favor their former Bell sister company, to the detriment of the nascent long distance market."[8] Today, the concern is that the merged and newly concentrated market[9] may provide increased incentives for local exchange companies to favor their affiliated long distance operations, to the detriment of the remaining competition in the long distance market.[10] Doing away with the equal access requirement would also harm local competition, because local competitors would not be able to access long distance competitors to supply key parts of the local/long distance bundles.

The equal access and non-discrimination requirements should continue in effect, for the benefit of consumers.

[8] NASUCA Comments (May 10, 2002) at 5.

[9] See fn. 7. In 1996, there were seven RBOCs and two very large interexchange carriers. Today there are the three remaining RBOCs: AT&T, Verizon and their smaller sister Qwest.

[10] The rise of intermodal long distance alternatives (wireless and Voice over Internet Protocol) does not justify scrapping the remaining wireline long distance competition.

Respectfully submitted,

/s/ David C. Bergmann
David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications Committee
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Phone (614) 466-8574
Fax (614) 466-9475
bergmann@occ.state.oh.us

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

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